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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 CITY OF SEATTLE,)
10 Plaintiff,) CASE NO. C13-0585-JLR-MAT
11 v.)
12 MICKEY MANUEL,) REPORT AND RECOMMENDATION
13 Defendant.)
14 _____)

15 INTRODUCTION AND SUMMARY CONCLUSION

16 Mickey Manuel is a *pro se* inmate detained at the King County Correctional Facility on
17 pending state criminal charges. Citing 28 U.S.C. §§ 1441 and 1455, he filed a notice to
18 remove Seattle Municipal Court No. 586738, a non-traffic criminal matter filed against him on
19 March 28, 2013. (Dkt. 1 (Notice of Removal)); <http://dw.courts.wa.gov>. For the reasons set
20 forth below, the Court recommends this matter be summarily DISMISSED and REMANDED
21 back to state court, and plaintiff's motion to proceed in forma pauperis ("IFP") (Dkt. 1-1) be
22 STRICKEN as moot.

01 Section 1441 governs the removal of civil actions and is, therefore, inapplicable to this
02 criminal matter. Under § 1455(a), a criminal defendant may remove a criminal prosecution
03 from a state court by filing “a short and plain statement of the grounds for removal, together
04 with a copy of all process, pleadings, and orders served upon such defendant . . . in such action.”
05 The notice of removal “shall include all grounds for such removal.” § 1455(b)(2). The
06 district court “shall examine the notice promptly[.]” and order summary remand “[i]f it clearly
07 appears on the face of the notice and any exhibits annexed thereto that removal should not be
08 permitted[.]” *Id.* at (b)(4).

09 Mr. Manuel alleges denial of “rights secured to Respondent by [statutes] providing for
10 due process, the equal civil rights of citizens of the United States and rights under the fourteenth
11 amendment to the Constitution of the United States including, but not exclusive to false arrest,
12 false imprisonment and cruel and unusual punishment[.]” (Dkt. 1 at 1-2.) He explains that
13 this and two related cases, *City of Seattle v. Manuel*, C13-584-MJP-BAT (relating to Seattle
14 District Court No. 513PA5048) and *Harborview Medical Center v. Manuel*,
15 C13-583-MJP-JPD (relating to King County Superior Court No. 13-6-0053A-9-SEA), stem
16 from a February 2013 incident involving an altercation with his neighbor over property lines
17 and removal of a fence, after which plaintiff was “brought to the King County Correctional
18 Facility based on allegations of assault.” (*Id.* at 2.) Mr. Manuel alleges, in substantive part,
19 that following his involuntary detention, medication, and treatment at Harborview Medical
20 Center’s Psychiatric Unit, he was transferred back to the King County Correctional Facility and
21 held for failure to appear regarding the allegations of assault. (*Id.* at 2-3.) He maintains a
22 criminal complaint has not been filed against him, that he has not waived his criminal speedy

01 trial rights, and that the pending actions constitute improper “forum shopping[.]” (*Id.* at 3.)

02 Mr. Manuel does not set forth grounds for removal. As a criminal defendant, he may
03 remove his state court case to federal court only in limited circumstances. Only 28 U.S.C. §§
04 1442 (“Federal officers or agencies sued or prosecuted”), 1442a (“Members of armed forces
05 sued or prosecuted”), and 1443 (“Civil rights cases”) provide for removal of state criminal
06 cases to federal court. *See North Carolina v. Peggs*, 2012 WL 1392353 at *2 (M.D.N.C. April
07 23, 2012). The first two statutes are inapplicable, as Mr. Manuel makes no claim he is a
08 federal officer or a member of the armed services who is being prosecuted for an act done under
09 color of the office. *See* §§ 1442(a), 1442a.

10 Section 1443 allows for removal where a criminal defendant “is denied or cannot
11 enforce in the courts of such State a right under any law providing for the equal civil rights of
12 citizens of the United States, or of all persons within the jurisdiction thereof[.]” 28 U.S.C. §
13 1443(1). Removal under § 1443(1) is permitted only where a defendant is deprived rights
14 guaranteed by federal laws providing for racial equality, and cannot enforce those rights in state
15 court, typically as a result of a state statute or constitutional provision. *Johnson v. Mississippi*,
16 421 U.S. 213, 219-20 (1975); *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99 (9th Cir. 2006). A
17 criminal defendant must assert that the state will not enforce rights given to him by “explicit
18 statutory enactment protecting equal racial civil rights[.]” and must support this allegation “by
19 reference to a state statute or a constitutional provision that purports to command the state
20 courts to ignore the federal rights.” *People of State of Cal. v. Sandoval*, 434 F.2d 635, 636 (9th
21 Cir. 1970).

22 Mr. Manuel’s allegations suggest his belief in the improper handling of his case by the

01 state courts. However, removal under § 1443(1) requires more than a simple allegation that
02 one's federal rights have been improperly denied by the state, or that one cannot obtain a fair
03 trial in the state court. *City of Greenwood v. Peacock*, 384 U.S. 808, 827-828 (1966). "Under
04 § 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the
05 rare situations where it can be clearly predicted by reason of the operation of a pervasive and
06 explicit state or federal law that those rights will inevitably be denied by the very act of bringing
07 the defendant to trial in the state court." *Id.* Under these standards, Mr. Manuel's notice fails
08 to establish that removal under § 1443(1) is appropriate.

09 Section 1443(2) allows for removal where a criminal defendant is being prosecuted
10 "[f]or any act under color of authority derived from any law providing for equal rights, or for
11 refusing to do any act on the ground that it would be inconsistent with such law." "[T]his
12 subsection of the removal statute is available only to federal officers and to persons assisting
13 such officers in the performance of their official duties." *City of Greenwood*, 384 U.S. at 815.
14 As there is nothing in the notice of removal showing Mr. Manuel is a state or federal officer, or
15 working for one, there is no basis for removal under § 1443(2).

16 In short, Mr. Manuel fails to show he is being prosecuted pursuant to a state law that
17 purports to command state courts to ignore federal rights. To the extent he raises defenses to
18 his criminal charges, he should raise them in state court proceedings, not through a removal
19 action. *See Johnson*, 421 U.S. at 219 (defendant seeking removal of his criminal case must
20 show he cannot enforce federal rights in State court). Moreover, to the extent Mr. Manuel
21 argues his state criminal case should be removed because federal constitutional rights are at
22 issue, those rights may be addressed in the state courts. *See, e.g., Robb v. Connolly*, 111 U.S.

01 624, 635-36 (1884) (“In establishing [federal] courts, Congress has taken care not to exclude
02 the jurisdiction of the State courts” from “consideration and determination of questions
03 involving an authority, or a right, privilege, or immunity, derived from the constitution and laws
04 of the United States.”).

05 For the reasons described above, this Court should not permit removal. Instead, the
06 Court should DISMISS and REMAND this action to the state courts, and STRIKE the IFP
07 application as moot. A proposed Order accompanies this Report and Recommendation.

08 DATED this 5th day of April 2013.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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